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MEMORANDUM

Date: September 13, 2006

To: Members of the Virginia Housing Commission's Accessibility and Building Codes work group

From: Jeff Gore
Phyllis Errico

Subject: **HB 1451 Uniform Statewide Building Code; violations; penalty.** Provides that where the violation is of the Maintenance Code relating to occupancy limitations on dwelling and efficiency units in a locality where the local governing body has taken official action to enforce the Maintenance Code, any owner or other person, firm, or corporation convicted of such a violation may also be punished by confinement in jail for not more than 12 months. Currently, any violation of the Building Code is punishable by a fine of not more than \$2,500.

As you know, HB 1451 was carried over during the 2006 legislative session and referred to the Housing Commission for further study. During the work group's discussion of HB 1451 at the August 3rd meeting, it was apparent that input from around the state might help shed some light on the issue of overcrowding in residential dwelling units and challenges of local enforcement.

VACo surveyed all 95 Virginia counties asking them the following six questions:

1. How often does the court in your jurisdiction impose jail time for building code violations?
2. Has your county adopted the Virginia Maintenance Code?
3. How does your county currently enforce violations of dwelling occupancy limits?
4. Are such violations a growing problem in your county?
5. How many such violations does your county investigate per year?
6. Are current enforcement mechanisms adequate to address this issue?

Thirty-six counties from throughout the state responded to the survey, and their answers are tabulated in the attached document. In short, there appears to be a significant (and growing) number of dwelling occupancy violations being investigated each year in Virginia's more urban and suburban counties, while the issue seems much less acute in rural counties. Sixteen of the thirty-six counties expressed a need for better enforcement tools, while nine of thirty-six counties cited a growing trend of finding an increasing number of violations each year.

I hope the attached information proves helpful to the work group in its consideration of this issue. Please contact me at perrico@vaco.org or Jeff Gore (jgore@vaco.org) if you have any questions.

Virginia Association of Counties: (Dwelling Occupancy Limits) Survey

County:	Adopted Maintenance Code?	Enforce occupancy limits through zoning or building code?	Number of occupancy violations/yr	Increasing trend of violations?	Adequate enforcement authority?
1. Accomack	no	other	2-3	don't know	yes
2. Albemarle	no	zoning	15	yes	yes
3. Alleghany	no	building code	0	no	yes
4. Bedford	no	zoning	20	yes	yes
5. Campbell	no	zoning	<1 average	no	yes
6. Carroll	no	building code	don't know	don't know	no
7. Chesterfield	yes	building code	<1 average	no	yes
8. Halifax	no	other	5	don't know	yes
9. Henrico	yes	building code	10	yes	no
10. Louisa	no	other	0	no	no
11. Dinwiddie	no	other	0	don't know	no
12. Fairfax	yes	both	902	yes	no
13. Gloucester	yes	zoning	0	no	yes
14. Goochland	no	other	0	no	no
15. Greensville	yes	building code	4 (March)	don't know	yes
16. Hanover	yes	building code	12 (June)	yes	no
17. Henry	no	zoning	0	no	yes
18. Isle of Wight	yes	other	0	no	yes
19. King and Queen	no	zoning	0	no	no
20. King William	yes	building code	10	no	yes
21. Lancaster	yes	building code	0	no	no
22. Loudoun	yes	building code	360	yes	no
23. Lunenburg	no	zoning	10	yes	yes
24. Mecklenburg	yes	other	-	don't know	no
25. Northampton	no	other	4 (Feb)	don't know	yes
26. Prince Edward	no	other	0	no	yes
27. Price George	yes	both	0	no	yes
28. Prince William	yes	both	>500	yes	no
29. Rappahannock	no	building code	5	no	no
30. Richmond	no	other	0	no	-
31. Rockbridge	no	building code	0	no	yes
32. Russell	yes	-	5	no	yes
33. Southampton	no	building code	0	no	yes
34. Spotsylvania	no	other	20	don't know	no
35. Westmoreland	no	building code	10	yes	no
36. York	no	zoning	5	don't know	no
Tot: 36 (38%)	14 yes 22 no	8 zoning 14 building code 10 other ¹ 3 both	1900 approx. 93% in FFX, PW, Loudoun	9 increasing 18 not increase 9 don't know	19 yes 16 no

*All counties reported that the court in their jurisdiction never imposes jail time for violations of dwelling occupancy limits.

¹ Of the counties replying with "other" to the method of enforcement question, some cite enforcement through the local health department (Accomack, Russell); Hanover enforces through illegal occupancy of nonresidential space; others cite no enforcement because they have not adopted the maintenance code; while some cite no problems with violations.

County comments on enforcement of dwelling occupancy limits

Carroll County: We are under staffed.

Henrico County: The County zoning regulations do not contain a provision limiting the number of unrelated individuals that may occupy a single-family dwelling or single dwelling unit. The County Attorney's office in the past has indicated it may be difficult to defend a limit because of a lack of specific State law. Many jurisdictions use a zoning limit like 4 or 5 unrelated persons, with no limit if the persons are related by blood or marriage and including foster children. A State law limiting occupancy for unrelated persons that localities may enact would be beneficial with a limit at 4 persons. Localities could then choose to go with a higher limit if they wanted to.

Louisa County: In accordance with the IRC, the standard to enforce occupant loads in dwelling units does not exist.

Fairfax County: The County has witnessed a significant increase in the number of overcrowding situations, which in one case has led to two fatalities, as a result of improper emergency egress during a fire. The County has seen an alarming increase in the number of unfit living situations where residents have been found sleeping in crawl spaces and attics as well as basement rooms with no emergency egress or ventilation. The current penalties do not provide for a timely mechanism by which to address these issues, as traditional enforcement techniques and their resulting penalties do not provide a significant or meaningful deterrent to those engaged in the overcrowding of homes for a profit motivation.

The current penalties which can be imposed by a court for this type of violation in the Zoning Ordinance and Property Maintenance Code are currently established as a civil penalty in the Zoning Ordinance and an unclassified misdemeanor under the Building Code, which carries with them a nominal fine and no possible jail sentence, until the third offense under the Building Code. The level of the fine has been seen by some violators as the "cost of doing business" in the establishment of boarding houses in residential areas, which often rent out rooms at a rate of up to \$1,000.00 per room. This overcrowding has shown to negatively impact the quality of life for residents and in some cases creates an unsafe living condition. This level of penalty has not shown itself to be effective in acting as a deterrent to this type of violation. Fairfax County would strongly endorse a change to the Code of Virginia, which would allow the courts the imposition of a jail sentence for this type of violation under the Property Maintenance Code, if so warranted by the circumstances of the violation.

Goochland County: The law is not clear on this issue. The term "Single-family dwelling" as it relates to a number of bodies allowed in the dwelling is not well defined in code.

Hanover County: The limits provided in the building code and the property maintenance codes do not adequately limit overcrowding conditions.

King and Queen County: We are rural and cannot fund enforcement of the property maintenance code at this time. Multifamily occupancies are no more than a 2 family house.

Lancaster County: The possibility of jail time for these violations would be very useful for enforcement. Although jail time is rarely sentenced, its mere inclusion will enhance enforcement.

Loudoun County: Its [the penalty] is [only a] misdemeanor.

Prince William County: The community has an expectation that single family homes should remain single family, and that no more than three or four unrelated people should reside in such homes.

Rappahannock County: Stiffer penalties would help deter offenders.

Spotsylvania County: There is not currently in the code a definition concerning a family.

Westmoreland County: With the growing number of violations staff is taxed. We need a more direct avenue to court and fines or jail time that challenges the potential profit/loss analysis.